

DURHAM CITY COUNCIL WORKSESSION
THURSDAY, JUNE 10, 2004
Committee Room – 2nd Floor – City Hall
1:00 p.m.

SUBJECT: GRANT PROJECT ORDINANCE AMENDING ORDINANCE #11760
FY 1999-00 SECTION 3 CAPITAL GRANT

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to suspend the rules of the City Council and take action on the above-mentioned subject was approved at 3:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to adopt a Grant Project Ordinance FY 1999-00 Transit Grant Section 3 Capital Grant Superseding Grant Project Ordinance #11760 was approved at 3:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

Ordinance #12949

SUBJECT: APPROVAL TO ALLOCATE FUNDS TO INCREASE DATA
OPERATIONS, MAINTENANCE AND ADMINISTRATION
FACILITY PROJECT CONTINGENCY

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to suspend the rules of the City Council and take action on the above-mentioned subject was approved at 3:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Council Member Clement seconded by Council Member Catotti to authorize the City Manager to increase the contingency amount by \$608,031 for a total contingency of \$1,358,031 and a total project amount not to exceed \$10,558,734; and

To authorize the City Manager to execute change orders not to exceed the revised contingency of \$1,358,031 and the revised total project budget of \$10,558,734 was approved at 3:34 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

SUBJECT: CONTRACT WITH MV TRANSPORTATION, INC.

To award the contract for Fixed Route Transit Service Operation and Maintenance, and Optional Service to MV Transportation, Inc; and
To authorize the City Manager to execute said contract; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the contract awarded by City Council.

Internal Audit Director Wanda Page made comments on the RFP process and the proposals submitted for the contract to provide management for the city's bus service [the base proposals, the changes in the BAFO and the General Manager].

Discussion was held on the General Manager and Maintenance Manager.

Mayor Bell asked a MV representative if they were pressured to hire Tom Hartley.

A representative from MV replied absolutely not.

Data Board Member Rita Gregory made comments on the RFP process and noted it was very unclear. Also, she made comments on several firms requesting the same person [Tom Hartley].

Kevin Adams, of Connex LLC, noted the company has requested an investigation of this matter and he stated the procurement process needed to be a clean process. He noted they had an employee working for them during the process with a confidentiality and a non-compete agreement. He stated they were concerned that the employee ends up in another bid/contract. Mr. Adams stated the original bid they submitted was the low bid. Also, he made comments on an article that appeared in the newspaper that MV was pressured by DATA to hire Tom Hartley.

Council Member Clement asked if there were any time constraints on this process.

City Manager Conner stated the current contract expires on June 30, 2004. The manager noted if there were further concerns from Council the administration could review the concerns and make a recommendation on June 21st.

Mayor Pro Tempore Cole-McFadden asked the City Attorney if there were any improprieties in terms of Mr. Hartley's relationship with Connex and if the city hired MV how would that affect the city.

City Attorney Blinder replied it should not. He noted it was an issue between the two companies.

Mayor Bell asked if there was in fact a breach of confidentiality how does that get determined.

City Attorney Blinder replied that would be determined through private action by Connex and its General Manager and possibly bringing in MV if they felt that MV had somehow interfered in the private contractual relationship.

A representative from Connex stated they were in receipt of a signed written confidentiality/a non-compete agreement with Mr. Hartley. He noted this document means that while Mr. Hartley is employed with Connex he cannot compete against Connex, cannot aid a competitor in any way, cannot provide them with company information.

Mayor Bell asked the Connex representative if a company decides to put his name/resume in as an applicant and he did not give him his name and was not aware of his name being considered - would that be a breach of confidentiality.

The representative from Connex replied no if the company acted on their own without his knowledge.

Mayor Bell asked Mr. Hartley if he had any conversation with MV Transportation in terms of the position [General Manager] while he was under contract with Connex. He asked Mr. Hartley if he was aware that his name was being added to the list.

Tom Hartley stated he had a telephone call from a MV representative who inquired about his interest in returning back to Durham. He stated he told them if they won the bid he would be interested in listening to what their offer would be.

Mayor Bell asked Mr. Hartley did they ask you specifically if they could include your name as the General Manager in the contract.

Tom Hartley noted the intent of his conversation was they inquired about his interest and he replied he would talk to them if they won the bid. He noted he did understand they would be putting him into their BAFO.

A representative from Connex noted he has a letter from MV to Mr. Hartley prior to submittal of the BAFO - offering him employment.

Mayor Bell made comments on creditability in the whole process and his discomfort level at the present.

Council Member Catotti noted any firm can submit the same person. She noted her main concern was if any confidential information was shared.

Attorney Floyd McKissick representing MV Transportation stated no confidential information was shared and what Mr. Hartley stated was exactly what transpired and

what occurred. He noted it was not unusual for a person's resume/name to appear as a part of a proposal for several firms. Also, Mr. McKissick spoke in support of MV Transportation being awarded the contract.

Feysan Lodde, the Owner of MV Transportation, noted she has always told her employees to do what is right because you never know when it will come back on you. She stated her company was honorable with a very good reputation.

Mayor Bell asked the City Attorney if the contract can be awarded to MV subject to them working out the details/issue about the General Manager.

Assistant City Attorney Baker reminded the Council that the proposals came as a total package with the General Manager and everyone involved as well. He noted the contract could be awarded as noted by the Mayor but there may be some other issues that could come up – for instance if another contractor felt as though MV was given special consideration or the ability to amend their proposal in order to obtain the contract without having the other contractors being able to amend their proposals as well.

Council Member Catotti spoke in support of moving the item forward as is and if an issue arises in the future then it would be dealt with at that point.

City Attorney Blinder wanted to make certain the administration had a provision in the contract that should the issue between the general manager and either Connex or who ever that would be – turns out to an outcome where then it is no longer possible or appropriate that there be a clause in the contract that requires the consent of the city to a change in relationship since the manager position is so important to the operation of the system.

Steve Mancuso of DATA noted the contract already has such a clause in it as noted by City Attorney Blinder.

MOTION by Council Member Clement seconded by Council Member Catotti to suspend the rules of the City Council and take action on this item was approved at 4:55 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

A motion was made by Council Member Clement to award the contract for fixed route transit service operation and maintenance, and optional service to MV Transportation, Inc. This motion was seconded by Council Member Catotti.

Jennifer Bowman stated they felt the protest submitted by Connex had not be addressed today.

City Attorney stated he felt the process followed as such - he would be comfortable defending the Council's decision to move forward.

MOTION by Council Member Clement seconded by Council Member Catotti to award the contract for fixed route transit service operation and maintenance, and optional service to MV Transportation, Inc; and

To authorize the City Manager to execute said Contract; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the contract awarded by City Council was approved at 5:00 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti and Clement. Noes: Council Member Best. Absent: Council Member Stith.

SUBJECT: ORDINANCE TO AMEND SECTION 12-28(B) OF THE DURHAM CITY CODE TO PROHIBIT PANHANDLING AT NIGHT

Assistant City Attorney Baker made comments on the proposed ordinance amendment highlighting changes. He noted the proposal was a nighttime panhandling prohibition 20 minutes before sunrise 20 minutes after sunset. He stated this was very similar to the one in Asheville, Raleigh and Chapel Hill as well.

City Attorney Blinder noted the adoption of this ordinance did not require a public hearing.

MOTION by Council Member Catotti seconded by Council Member Brown to suspend the rules of the City Council and take action on the above mentioned subject was approved at 5:05 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Council Member Catotti seconded by Council Member Brown to adopt an “Ordinance to Amend Section 12-28(b) of the Durham City Code to Prohibit Panhandling At Night” was approved at 5:05 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

Ordinance #12948

SUBJECT: DURHAM COUNTY HABITAT FOR HUMANITY – SECOND MORTGAGE PROGRAM \$125,000 HOME FUNDS

Council Member Clement noted he was on the board of Durham County Habitat for Humanity and he had not money involvement; therefore, he would be voting in support of this item.

MOTION by Council Member Catotti seconded by Council Member Clement to suspend the rules of the City Council and take action on the above mentioned subject was approved at 5:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to accept Habitat for Humanity's homeownership program underwriting guidelines; and

To authorize the City Manager to execute the Reservation of Funds Agreement in an amount not to exceed \$125,000 of HOME funds; and

To make changes to the agreement which do not increase the agreement amount, lessen Habitat for Humanity's duties, or extend the term beyond November 30, 2004 was approved at 5:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

SUBJECT: HEART OF DURHAM DEMOLITION – LVI SERVICES OF NORTH CAROLINA

MOTION by Council Member Catotti seconded by Council Member Clement to suspend the rules of the City Council and take action on the above mentioned subject was approved at 6:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Council Member Catotti seconded by Council Member Clement to authorize the City Manager to enter into a set price, all-inclusive contract with LVI Services of North Carolina Inc., for the sum of \$563,000 [this shall include all asbestos remediation, biohazard control, demolition of the structure, transport and debris disposal, erosion control measures, reseeded/straw and all site work as required by the specifications; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 6:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

SUBJECT: INFRASTRUCTURE IMPROVEMENTS FOR THE BARNES AVENUE REDEVELOPMENT – SEASIDE ENVIRONMENTAL CONSTRUCTORS, INC.

MOTION by Mayor Pro Tempore Cole-McFadden and seconded by Council Member Catotti to suspend the rules of the City Council and take action on the above-mentioned subject was approved at 6:42 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute a contract with Seaside Environmental Constructors Inc. for the infrastructure improvements for the Barnes Avenue Redevelopment project in the amount of \$874,511; and

To establish a contingency fund for the Barnes Avenue Redevelopment Infrastructure project in the amount of \$87,451; and

To authorize the City Manager to execute any necessary change orders for the Barnes Avenue Redevelopment contract provided the total cost of all change orders does not exceed \$87,451 and the total project cost does not exceed \$961,962; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council was approved at 6:42 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

SUBJECT: MANAGER’S MONTHLY EVALUATION

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Clement to conduct the manager’s monthly evaluation on Tuesday, June 22, 2004 at 5:30 p.m. was approved at 6:59 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Clement. Noes: None. Absent: Council Member Stith.

D. Ann Gray, CMC
City Clerk

